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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 201

RIN 0750-AH66

**Defense Federal Acquisition Regulation Supplement: New
Threshold for Peer Reviews of Noncompetitive Contracts (DFARS
Case 2012-D018)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the threshold for noncompetitive contract peer reviews.

DATES: Effective Date: [Insert 30 days after date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, telephone 571-372-6088.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule reduces the threshold for DoD peer reviews of noncompetitive contracts from the current level of \$1 billion to \$500 million. Previously, DoD published a final rule in the Federal Register at 74 FR 37625 on July 29, 2009, to address the

requirements for peer reviews of DoD solicitations and contracts. DFARS Case 2008-D035, entitled "Peer Reviews of Contracts," added DFARS 201.170, Peer Reviews, which (1) specified that the Office of the Director, Defense Procurement and Acquisition Policy, will organize teams of reviewers and will facilitate peer reviews for all solicitations and contracts for services valued at \$1 billion or more, and (2) required the military departments, defense agencies, and DoD field activities to establish procedures for preaward and postaward peer review of solicitations and contracts for services valued at less than \$1 billion.

This final rule—

- Clarifies DoD peer review phases and revises the threshold for peer reviews of noncompetitive procurements;
- Requires military departments and defense agencies to establish procedures for preaward peer reviews for noncompetitive procurements valued at less than \$500 million; and
- Adds an email address for the submission of rolling annual forecasts of acquisitions.

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal

Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because this rule concerns DoD's internal review processes and does not have a significant cost or administrative impact on contractors or offerors. These requirements affect only the internal operating procedures of the Government.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section

6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 201

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 201 is amended as follows:

PART 201 - FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR part 201 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Section 201.170 is revised to read as follows:

201.170 Peer reviews.

(a) DoD peer reviews. (1) The Office of the Director, Defense Procurement and Acquisition Policy, will organize teams of reviewers and facilitate peer reviews for solicitations and contracts, as follows using the procedures at PGI 201.170–

(i) Preaward peer reviews for competitive procurements will be conducted in three phases for all solicitations valued at \$1 billion or more;

(ii) Preaward peer reviews for noncompetitive procurements will be conducted in two phases for new contract actions valued at \$500 million or more; and

(iii) Postaward peer reviews will be conducted for all contracts for services valued at \$1 billion or more.

(2) To facilitate planning for peer reviews, the military departments and defense agencies shall provide a rolling annual forecast of acquisitions at the end of each quarter (i.e., March 31; June 30; September 30; December 31), to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting) via email to peerreviews@osd.mil.

(b) Component peer reviews. The military departments and defense agencies shall establish procedures for–

(1) Preaward peer reviews of solicitations for competitive procurements valued at less than \$1 billion;

(2) Preaward peer reviews for noncompetitive procurements

valued at less than \$500 million; and

(3) Postaward peer reviews of all contracts for services valued at less than \$1 billion.

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